S.B. CIVIL MISC. APPEAL NO.1922/2006
(The Oriental Insurance Co. Ltd. Vs. Sohan Lal & ors.)

Date of Order :: 20.12.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.D.S.Nimbla for the appellant
Mr.B.S.Sandhu for the respondents

In this appeal by the insurer against the award dated 02.09.2006 made by the Motor Accidents Claims Tribunal, Srikaranpur in Claim Case No.23/2003 essentially questioning the quantum of compensation awarded, affected parties i.e. the claimants have put in appearance in caveat and in view of consensus stated by the learned counsel for parties, the matter is disposed of finally while dispensing with service on other proforma respondents.

For awarding compensation on account of accidental death of Alok Choudhary, son of the claimants, the Tribunal has found that though the claimants asserted his age at 24 years but post-mortem report stated his age at 28 years and has, therefore, taken his age between 25 to 28 years. The Tribunal has found that the deceased was a permanent employee with 'Jadugar Samrat Shanker' earning salary income of Rs.4,500/- per month in the year 1991-2000, Rs.5,000/- per month in the year 2000-2001 and Rs.5,250/-

from 01.04.2001 to 25.03.2002. The fatal accident occurred in the night intervening 25/26th March 2002. The Tribunal has taken monthly income of the deceased at Rs.5,000/- and after deducting one-third on personal expenditure has taken two-third for the purpose of loss of contribution to the claimants and with application of multiplier of 18 has assessed pecuniary loss at Rs.7,20,000/- (Rs.3,333/- x 12 x 18); and allowing Rs.5,000/- towards non-pecuniary loss and another Rs.5,000/- towards funeral expenses, has assessed total loss at Rs.7,30,000/-; and after deducting Rs.50,000/- received by the claimants under 'No Fault Liability' has made award for the remaining amount of Rs.6,80,000/- together with interest at the rate of 6% per annum from the date of filing of claim application i.e. 08.10.2003. However, the Tribunal has put a stipulation about penal interest at the rate of 9% per annum for failure to deposit the amount by the insurer within a month.

The insurer has assailed the award aforesaid being highly exorbitant and excessive and being against settled legal principles. On the matter being taken up for motion hearing, Mr. B.S.Sandhu learned counsel appearing in caveat for the claimant-respondents Nos.1 & 2 in all fairness conceded that the award on its quantification of compensation stands on a higher side and submitted that the same may be re-stated while allowing compensation in the sum of

Rs.4,31,500/- with interest at the rate of 6% per annum from the date of filing of claim application. Learned counsel Mr.D.S.Nimbla appearing for the appellant-insurer in equal fairness has agreed to the proposition put forward by Mr.Sandhu and submitted that the award may be suitably modified. Learned counsel for the parties have placed on record the terms of settlement arrived at between the parties for suitable modification of the award.

Having examined the impugned award, this Court is satisfied that the figure arrived at by the parties in consensus remains that of just compensation admissible in this case and the award deserves to be modified accordingly. The Tribunal seems to have totally overlooked the fact that claimants are parents of the deceased respectively in 50 years and 45 years of age and in their relation application of multiplier of 18 with reference to Second Schedule is not proper. In the facts and circumstances of the case, there appears no justification for application of multiplier of more than 13. Then, the deceased being an unmarried person, proposition of taking entire of two-third of his income cannot be accepted correct. In view of future certainties as well as uncertainties, the chances of deceased getting married in future and a larger part of his income getting diverted to his own family cannot be ruled out. Contribution for the claimants could be taken maximum at

50% of the average income. However, the last drawn income of the deceased was Rs.5,250/- per month and it appears appropriate to assess pecuniary loss on the basis of such last drawn income only.

Therefore, in the present case, taking half of the last drawn income, loss of contribution for the claimants could be taken at Rs.2,625/- per month leading to a multiplicand of Rs.31,500/- per annum; and the same could be capitalized by a multiplier of 13 leading to pecuniary loss at Rs.4,09,500/-. The claimants-parents having lost their son in his prime youth deserve to be allowed Rs.10,000/- each towards loss of services of their son and further amount of Rs.2,000/- deserves to be allowed towards funeral expenses. The claimants are, therefore, entitled for total compensation in the sum of Rs.4,31,500/- and the award made by the Tribunal in the sum of Rs.7,30,000/- obviously stands much in excess of reasonable compensation allowable in this case. The Tribunal has further erred in putting a stipulation of penal interest at 9% per annum for not depositing the amount within one month. Once the Tribunal has exercised the discretion to award interest at the rate of 6% per annum from the date of filing of claim application, the proposition for penal rate of interest is not envisaged by law and cannot be countenanced.

Therefore, the amount of Rs.4,31,500/- agreed to by the parties appears to be that of just compensation and after deducting Rs.50,000/- already paid towards No Fault Liability, the claimants shall be entitled for an amount of Rs.3,81,500/- with interest at the rate of 6% per annum from the date of filing of claim application.

Accordingly, this appeal succeeds to the extent indicated above and with the consent of parties, the award is modified and re-stated allowing compensation in the sum of Rs.4,31,500/- to the claimants who shall be entitled to the remaining amount of Rs.3,81,500/- with interest at the rate of 6% per annum from 08.10.2003, the date of filing of claim application.

The amount payable under the modified award shall be deposited by the insurer within 30 days from today with the Tribunal and the Tribunal shall carry out requisite apportionment and issue necessary orders for disbursement. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI), J.

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